

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1175 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
KANUBHAI ZINABHAI PATEL

Versus

SURESHBHAI MOTIBHAI GANDHI  
-----

Appearance:

MR MEHUL S SHAH for Petitioner  
MR DR BHATT for Respondent No. 1, 2  
-----

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/04/2000

ORAL JUDGEMENT

Learned advocate Mr. Shah is appearing for the petitioner. Learned advocate Mr. Bhatt is appearing for the respondents. In this petition, the order passed by the labour court, Navsari in Recovery Application No.

375 of 1985 is under challenge. This petition was admitted by this court on 10.12.1990 and rule was made returnable on 18th January, 1991.

The labour court has considered the claim of the petitioner in respect of difference under the Minimum Wages Act for the period from 1975 to 1985. Total claim was of Rs. 5934.50. The said claim was contested by the respondent by filing the written statement before the labour court inter alia pointing out that there was no relationship of master and servant between the respondents and the petitioner and that the provisions of the Minimum Wages Act are not applicable to the present case and that the petitioner was working with the respondent and was receiving labour charge at the rate of Rs. 2.25 per item. It was further contended by the respondents before the labour court that the respondent had given loan to the petitioner to the tune of Rs.6131.00 which has not been paid back by the petitioner to the respondents and that the petitioner had left the job at his own with effect from 25.11.1983. The respondent has paid to the petitioner from Sept. 1983 to October, 1983 on 22nd October, 1983 and receipt thereof was also given by the petitioner to the respondents.

The labour court has examined the merits of the matter in paragraph 3 of the impugned order. The labour court has considered that there was no relationship of master and servant between the respondents and the petitioner because the respondent was working on piece rated basis and was getting charge per item and no amount has remained unpaid against the respondents. The labour court also considered that the said recovery application was filed after a period of ten years and there was no any justification for such delay and that before filing such recovery application, no notice of demand was served by the petitioner to the respondents. The labour court has also observed that the petitioner workman has left the job at his own volition. The labour court observed that the said recovery application was filed as a counter blast against the respondents. In view of such observations and findings, the labour court rejected the recovery application by passing the order dated 29th April, 1989. Said order of the labour court has been challenged by the petitioner by filing this petition before this court.

Learned advocate Mr. Shah has submitted that the labour court has erred in coming to the conclusion that there was no relationship of master and servant between the respondents and the petitioner. He has further

submitted that that the findings of the labour court are not in accordance with law. According to him, the labour court has committed gross error both in law and facts in rejecting the recovery application filed by the petitioner.

As against that, learned advocate Mr.Bhatt has submitted that the labour court has rightly observed that there was no relationship of master and servant between the parties. He has further submitted that the findings of the labour court are based on the evidence produced before the labour court and the same should not be interfered by this court while exercising the powers under Article 226/227 of the Constitution of India. He has further submitted that since the petitioner has not been able to point out any jurisdictional error and/or any infirmity in the order impugned herein, this petition should be dismissed with costs.

I have considered the impugned order passed by the labour court. I have also considered the submissions made by the learned advocates for the parties. The impugned order has been passed by the labour court after considering the evidence on record. I am, therefore, of the view that the labour court has committed no error in rejecting the recovery application filed by the petitioner. Learned advocate appearing for the petitioner has not been able to point out any jurisdictional error and/or infirmity in the order impugned herein. Therefore, the petition is required to be dismissed.

In view of the above, this petition is dismissed.  
Rule is discharged. There shall be no order as to cost.

20.4.2000. (H.K.Rathod,J.)

Vyas